R. NATESAN v. K. THANALETCUMI & ANOR.

[Orig. Civ. Juris. (Wilson, J.) November 19, 1951]

[K. L. — Civil Suit No. 233 of 1950]

Infant — Minor representing to be Major and thus entering into Contract — Whether estopped from pleading Minority in avoidance of Contract.

When an infant has induced a person to Contract with her by means of a false representation that she was of full age, she is not estopped from pleading her infancy in avoidance of the Contract.

Cases referred to:—

(1) *Ram Ratun Singh v. Shew Nandan Singh* I.L.R. 29 Cal. 126.

(2) *Ganesh La'La v. Bapu & Ors.* I.L.R. 21 Bom. 198.

(3) *Khan Gul v. Lakha Singh* A.I.R. (1928) Lahore 609.

CIVIL SUIT.

K. L. Devaser for the plaintiff.

A. J. Bostock Hill for 1st defendant.

M. Edgar for 2nd defendant.

Cur. Adv. Vult.

Wilson, J. : — The plaintiff sues the two defendants on an agreement dated the 28th March, 1950. entered into by the three parties. The 1st defendant in her statement of defence alleged that at the time when she signed the agreement she was a minor and for that reason the agreement is void so far as she is concerned. The only evidence called so far has been in regard to this defence, and it is on this point only that I am required at this stage to give a decision.

No birth certificate has been produced, but on the evidence I am satisfied that it is probable that she was a minor at the material time. I would go as far as to say that I am so satisfied beyond all reasonable doubt as having seen the girl I think it is quite likely that she is still a minor to-day.

Mr. Devaser has raised a legal point that even if she was a minor she is estopped from so pleading, because she has represented herself as being of full age. In the first place I cannot find that there was any such representation prior to the signing of the agreement and for that reason I would find that the plea of estoppel must fail. In the second place, even if there was any such representation I would still find that the plea of estoppel must fail. Mr. Devaser has based his submission on two cases. The first one is *Ram Ratun Singh v. Shew Nandan Singh*[1]. The facts in that case seem to me to be quite different. The minor was a plaintiff suing through his guardian to recover again certain sums of money which had already been paid to him personally. To me it appears that the action was in itself fraudulent.

The second case was *Ganesh La'La v. Bapu & Ors.*[2]. In this case the minor had executed a deed of sale containing a recital that he was twenty-two years of age.

There is, however, a third case cited by Mr. Bostock Hill, *Khan Gul v. Lakha Singh*[3]. In this case a number of questions were put to a Full Bench of five judges. One question was whether a minor, who, by falsely representing himself to be a major, has induced a person to enter into a contract, is estopped from pleading his minority to avoid the contract. All five judges agreed that this particular question must be answered in the negative. On the basis of the decision in that case I would hold that even if the 1st defendant had induced the plaintiff to enter into the the agreement with her and the 2nd defendant by falsely representing that she was of full age she is not estopped from avoiding the agreement by pleading her minority.

For these reasons I give judgment for the 1st defendant with costs. The claim against the second defendant will proceed on a date to be fixed.

Order accordingly.

SULAIMAN BIN ROSAH & 8 ORS. v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Wilson, J.) October 23, 1951]

[K. L. — Criminal Appeal No. 42 of 1951]

Criminal Procedure — Criminal Procedure Code, ss. 173 and 305 — Plea of Guilty before a Magistrate — Appeal against Convictions and Sentences — No right of Appeal.

The appellants gave notice of appeal against the convictions and sentences passed upon them by the 2nd Magistrate, Kuala Lumpur. They were recorded as having pleaded guilty to charges against them. In the original Memorandum of Appeal they alleged that the charges were wrongly framed; they did not understand the seriousness of the charge against them; that the Magistrate should not have accepted their pleas of guilty and the sentences were excessive. Subsequently further grounds of appeal were filed. At the hearing of the appeal Counsel for the appellants relied entirely on the further grounds of appeal. In the further grounds of appeal it was not alleged that the sentences were excessive. It was recorded that the charges were read over and explained and that the accused pleaded guilty and understood the nature and consequences of their pleas.